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Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

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Refer Reply To:

CC:CORP:01

PLR-102910-09

Date:

May 19, 2009

LEGEND:

Parent =

First Tier Entity =

Series A Preferred =

Series B Preferred =

X District =

Share Based Plans =

Plan Trust =

B =

C =

D =

E =

EE =

EEE =

EEEE =

F =

G =

M =

N =

O =

P =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

We respond to your letter dated January 16, 2009, and subsequent correspondence, in which you requested rulings as to certain federal income tax consequences of the transactions discussed below.

The rulings contained in this letter are based on facts submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in the support of the request for rulings. Verification of the information and other data may be required as part of the audit process.

FACTS

Parent is the common parent of an affiliated group (the "Parent Group") that files a consolidated federal income tax return on a calendar-year basis using the accrual method of accounting. The Parent Group was a loss group within the meaning of §1.1502-91(c) of the Income Tax Regulations for its Year 1 taxable year.

Prior to Date 1, Parent had outstanding a single class of common stock ("Common"), as well as multiple classes of preferred stock described in section 1504(a)(4) of the Code, and Parent's only 5-percent shareholder consisted of a single direct public group. On Date 1, Parent issued B shares of Series A Preferred for \$C per share to public shareholders (within the meaning of §1.382-2T(f)(11)). Each share of Series A Preferred was/is convertible into Common at any time, initially at a rate of one share of Series A Preferred for D shares of Common, which conversion rate was/is subject to certain anti-dilution adjustments and to adjustments upon the occurrence of certain change-of-control events.

On Date 2, Parent issued E shares of Series B Preferred for \$C per share and EE shares of Common for \$EEE per share. The Date 2 issuances were to public shareholders (within the meaning of §1.382-2T(f)(11)), except for EEEE shares of Series B Preferred issued to First Tier Entity. Each share of Series B Preferred was/is convertible into Common at any time prior to Date 6, at a minimum conversion rate of one share of Series B Preferred for F shares of Common, which conversion rate was/is subject to certain anti-dilution adjustments and to adjustments upon the occurrence of certain "cash acquisition" transactions. On Date 6, each Series B share will mandatorily convert into between F and G shares of Common, subject to certain anti-dilution adjustments.

The Common, the Series A Preferred, and the Series B Preferred (collectively referred to as the "Parent Stock") are the only classes of Parent stock that have constituted 'stock' for purposes of measuring shifts in ownership under section 382. The Date 1 issuance of Series A Preferred for cash resulted in the segregation of a new direct public group and the allocation of the issued shares between the new group and previously existing public group under §1.382-3(j)(3). The Date 2 issuance of Common and Series B Preferred for cash resulted in the segregation of a new direct public group and the allocation of the issued shares between the new group and previously existing public groups under §1.382-3(j)(3).

The Parent Group sponsors several share-based employee incentive plans (the “Share Based Plans”). Pursuant to the Share Based Plans, eligible employees are awarded restricted stock units (“RSUs”) under which underlying shares of Common may eventually be transferred to eligible employees. Parent has established a trust, the Plan Trust.

On Date 3, Parent filed a petition in the United States Bankruptcy Court for the X District seeking relief under chapter 11 of the United States Bankruptcy Code. On Date 4, Parent filed a motion with the Bankruptcy Court seeking an order (the “Stock Trading Order”) imposing trading restrictions on Parent Stock and options to acquire such stock. The restrictions were intended to prevent an ownership change of the Parent Group and thereby to protect the value of the Parent Group’s net operating loss carryovers and other tax attributes. The restrictions require advance notice of, and the right to object with respect to, any transfers that have the propensity for creating an owner shift in Parent under section 382. The Stock Trading Order provides that transfers of Parent Stock that do not comply with the required procedures shall be null and void *ab initio* as an act in violation of the automatic stay under sections 362 and 105(a) of the Bankruptcy Code. The Stock Trading Order was approved by the Bankruptcy Court and entered on Date 5, effective as of Date 4.

The restrictions relate to acquisitions and dispositions of Parent Stock involving a “Substantial Shareholder,” which generally refers to a person who owns (or would own) at least M shares of Parent Common (representing approximately 4% of Parent’s Common outstanding) or N percent (greater than 4 but less than 5 percent) of either Series A Preferred or Series B Preferred. Ownership for this purpose takes into account constructive ownership rules of section 382 and the regulations thereunder.

Under the Stock Trading Order, any person intending to acquire Parent Stock must notify Parent and the Bankruptcy Court at least P days in advance if the proposed acquisition would either (i) cause such person to become a Substantial Shareholder, or (ii) in the case of a person who is already a Substantial Shareholder, increase the amount of Parent Stock owned by such person. Similarly, any Substantial Shareholder intending to dispose of Parent Stock must notify Parent and the Bankruptcy Court at least P days in advance of the proposed disposition.

Pursuant to the procedures set forth in the Stock Trading Order, Parent may object to any proposed transfer of Parent Stock on the grounds that such transfer may adversely affect the Parent Group’s ability to utilize tax attributes as a result of an ownership change of Parent. Parent must file any objection within O days of receiving notice of the proposed transfer. If Parent so objects, any proposed transfer is not effective unless approved by the Bankruptcy Court.

To the extent a transaction is effected in violation of the Stock Trading Order (a “Prohibited Transaction”), Parent intends to enforce the provisions of the order rendering the transaction null and void as follows: Promptly upon becoming aware of

the Prohibited Transaction, Parent will take action seeking to compel (through legal proceedings, if necessary) the party who acquired or disposed of Parent Stock in the Prohibited Transaction to take certain actions as described below (the “Terms of Enforcement”).

If Parent knows the identity of both parties to the Prohibited Transaction (i.e, the identity of both the seller and purchaser of the Parent Stock that is the subject of the Prohibited Transaction), Parent may seek to compel the parties’ rescission of the transaction. Otherwise, in the case of a prohibited acquisition (a “Purported Acquisition”), Parent will seek to compel the acquirer (“Purported Acquirer”) to dispose in an arm’s length transaction of the number of shares or percentage of Parent Stock acquired in excess of the number of shares or percentage that would have been permitted under the Stock Trading Order, with any excess proceeds from such sale transferred to one or more section 501(c)(3) organizations unrelated to the Purported Acquirer. For this purpose, “excess proceeds” are—(1) in a case where net proceeds (i.e., the amount realized on the compelled disposition, less the costs of sale) exceeds the basis of the shares disposed of, the amount of such excess, plus the amount of any distributions made on said shares while held by the Purported Acquirer, and (2) in a case where the net proceeds are less than the basis of the shares disposed of, the amount of any distributions made on said shares while held by the Purported Acquirer, but only to the extent that the sum of such distributions plus the net proceeds realized on the compelled disposition exceed the Purported Acquirer’s basis in the shares disposed of. If the Purported Acquirer received the stock acquired in the Purported Acquisition by means of gift or inheritance, its basis for this purpose shall be the fair market value of said stock at the time received.

In the case of a prohibited disposition (a “Purported Disposition”), Parent will seek to compel the transferor (“Purported Transferor”) to reacquire the number of shares sold in violation of the Stock Trading Order in an arm’s length transaction, with any excess proceeds realized from the sale and reacquisition transferred to one or more section 501(c)(3) organizations unrelated to the Purported Transferor. For this purpose, “excess proceeds” are the excess, if any, of the net proceeds received in the Purported Disposition over the sum of (1) the net amount paid for the reacquired shares, plus (2) the amount of any distributions made on the reacquired shares during the period beginning with the Purported Disposition and ending on the date of reacquisition (other than distributions received by the Purported Transferor on such shares).

Parent will request the Purported Acquirer or Purported Transferor to promptly notify Parent of all relevant facts relating to actions taken in connection with the above procedures to comply with the enforcement of the Stock Trading Order.

REPRESENTATIONS

The taxpayer makes the following representations:

(1) The Common, the Series A Preferred, and the Series B Preferred are the only classes of Parent stock that constituted 'stock' within the meaning of section 382(k)(6) and §1.382-2(a)(3) at any time during the period beginning with the taxable year in which the Parent Group became a "loss group" (within the meaning of §1.1502-91(c)) and ending with its Year 1 taxable year.

(2) Parent has not made any distributions on its stock since the issuance of the Series A Preferred on Date 2, other than the stated dividend on its preferred stock and the customary dividend on its common stock.

(3) Regarding the payment of cash in lieu of fractional shares of Common upon conversion of Series A Preferred or Series B Preferred—

(a) The purpose of the cash payment is to spare Parent Group the expense and inconvenience of issuing and transferring fractional shares. These cash payments will not be separately bargained-for consideration.

(b) The fractional share interests of each shareholder will be aggregated, and no shareholder will receive cash in an amount equal to or greater than the value of one share of Common valued as of the date of the conversion.

(4) The restrictions contemplated by the Stock Trading Order are legal, valid, binding, and enforceable against present and future holders of Parent Stock under applicable law, except as such enforceability may be limited by equitable principles. Parent intends to vigorously challenge and pursue by all available means any attempts to violate the Stock Trading Order.

RULINGS

Based solely on the information submitted and representations made, we rule as follows:

1. The Taxpayer may apply the following principle on the Date 1 testing date and on any subsequent testing date: On any testing date, in determining the ownership percentage of any 5-percent shareholder, the value of such shareholder's stock, relative to the value of all other stock of the corporation, shall be considered to remain constant since the date that shareholder acquired the stock; and the value of such shareholder's stock relative to the value of all other stock of the corporation issued subsequent to such acquisition date shall also be considered to remain constant since that subsequent date.

2. For purposes of the principle described in Ruling #1, a conversion of Series A Preferred or Series B Preferred into Common shall be disregarded, and the exchanging shareholder shall be considered to have acquired such newly issued Common as of the date it acquired the preferred stock exchanged therefor.

3. In the case of a conversion of shares of Series A Preferred or Series B Preferred into shares of Common in which cash is received by the converting shareholder in lieu of a fractional share of Common, Parent may disregard any shift in ownership occurring as a result thereof.

4a. Common issued to a public shareholder pursuant to a conversion of Series A Preferred shall be allocated to Parent's direct public groups in the same proportion as such groups were treated as having surrendered the converted Series A Preferred.

4b. Common issued to a public shareholder pursuant to a conversion of Series B Preferred shall be allocated to Parent's direct public groups in the same proportion as such groups were treated as having surrendered the converted Series B Preferred.

5. An RSU is considered to be an option within the meaning of §1.382-4(d)(9) only during the period of time (if any) before the underlying share(s) of Common are includible in the income of the eligible employee.

6a. Unless Ruling 6c applies, a person acquiring Parent Stock in a Prohibited Transaction will not be treated as having acquired ownership of that stock for purposes of section 382 and the regulations thereunder, provided the Purported Acquirer or the Purported Transferor has complied with the Terms of Enforcement.

6b. Provided Ruling 6c does not apply and that Parent has taken prompt action to enforce the Stock Trading Order as per the Terms of Enforcement, and is continuing to seek such enforcement as of the end of a taxable year of Parent, the Parent Stock transferred in violation of the Stock Trading Order will not be treated as having been acquired by any person for purposes of section 382 and the regulations thereunder.

6c. Should a court or other adjudicative body issue a final order declaring the restrictions in the Bankruptcy Court's Stock Trading Order unenforceable *ab initio*, then, for purposes of section 382 and the regulations thereunder, the ownership of Parent Stock acquired as the result of a Prohibited Transaction shall be treated as having been acquired on the date actually acquired, unless the transaction was rescinded.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Further, in the event that any shareholder acquires Parent Stock prior to the beginning of a testing period, no opinion is expressed regarding whether the principle described above should apply to factor out the effect of fluctuations in value of such stock relative to the value of other stock that occurred prior to the testing period. No opinion is expressed about whether or when eligible employees are considered to have taxable compensation income under the Share Based Plans and Plan Trust.

This ruling letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representative.

Sincerely,

Lisa A. Fuller
Senior Counsel, Branch 1
Office of Associate Chief Counsel. (Corporate)